

1  
2  
3  
4  
5  
6  
7  
8 UNITED STATES DISTRICT COURT  
9 CENTRAL DISTRICT OF CALIFORNIA  
10 WESTERN DIVISION

11 ANDRE NESBIT, } Case No. CV 23-00912-DMG-JDE  
12 Plaintiff, }  
13 v. } ORDER ACCEPTING FINDINGS  
14 SPEEDWAY LLC, et al., } AND RECOMMENDATION OF  
15 Defendants. } UNITED STATES MAGISTRATE  
16 JUDGE  
17

18 Pursuant to 28 U.S.C. § 636, the Court has reviewed the records on file,  
19 including the operative Third Amended Complaint (Dkt. 23, “TAC”) filed by  
20 Andre Nesbit (“Plaintiff”); the Report and Recommendation issued by the  
21 assigned magistrate judge (Dkt. 25, “Report”); and Plaintiff’s Objection to the  
22 Report (Dkt. 26).

23 The Court has engaged in a de novo review of those portions of the  
24 Report to which objections have been made. The Court accepts the findings  
25 and recommendation of the magistrate judge.

26 For clarity, the Court notes that Plaintiff originally sought to bring this  
27 action based on both federal question and diversity jurisdiction. (*See* Dkt. 1-1 at  
28

1 1.) The Magistrate Judge then advised Plaintiff of the requirements for  
2 pleading diversity of citizenship (*see, e.g.*, Dkt. 15 at 4-5, 7-8; Dkt. 22 at 12),  
3 and Plaintiff did not correct the deficiency in his allegations regarding  
4 Defendants' citizenship. Instead, Plaintiff now appears to be asserting only  
5 federal question jurisdiction, despite acknowledging that he is not bringing this  
6 action based on a federal claim pursuant to 42 U.S.C. § 1983. (Dkt. 23 at 1;  
7 Dkt. 26 at 1.)

8 As explained in the Report and Recommendation, Plaintiff has not  
9 stated a federal claim based on his request for injunctive relief or any potential  
10 claim pursuant to 42 U.S.C. § 1983. (*See* Dkt. 25 at 6-9.) In addition, the  
11 Court notes that Plaintiff is mistaken to the extent he argues that *New York*  
12 *Times Co. v. Sullivan*, 376 U.S. 254 (1964), provides for a federal cause of action  
13 for slander. (Dkt. 26 at 1.) Rather, the United States Supreme Court in *New*  
14 *York Times Co.* found that Alabama's state libel law was constitutionally  
15 deficient. 376 U.S. at 264, 267-84. Nor do Plaintiff's citations to California  
16 state court authority support any federal cause of action. (*See* Dkt. 23 at 3-6;  
17 Dkt. 26 at 1, 4-6 (citing *Unterberger v. Red Bull N. Am., Inc.*, 162 Cal. App. 4<sup>th</sup>  
18 414 (2008); *Chang v. Lederman*, 172 Cal. App. 4<sup>th</sup> 67 (2009); *Fowler v. Varian*  
19 *Assocs., Inc.*, 196 Cal. App. 3d 34 (1987).)

20 As the Report and Recommendation explains, because Plaintiff has not  
21 established that the Court has original jurisdiction over this action based on a  
22 federal question, and because Plaintiff has not met his burden of establishing  
23 diversity jurisdiction despite the opportunity for amendment, the Court will  
24 not exercise supplemental jurisdiction over Plaintiff's state law claims. (*See*  
25 Dkt. 25 at 10.)

26 ///

27 ///

28 ///

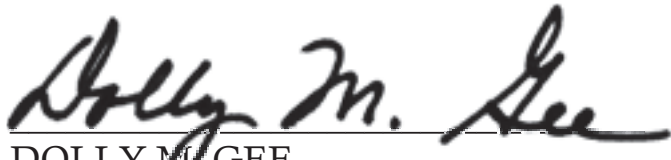
1 Therefore, IT IS HEREBY ORDERED that Judgment shall be entered  
2 dismissing this action without prejudice.

3 In addition, based upon the record before it, the Court finds and certifies  
4 that any appeal by Plaintiff would have no arguable basis in law or fact,  
5 rendering it frivolous and not taken in good faith under 28 U.S.C. § 1915(a)(3)  
6 and Federal Rule of Appellate Procedure 24(a)(3)(A). For the foregoing  
7 reasons, Plaintiff's existing *in forma pauperis* status is **REVOKED**.

8 Pursuant to Fed. R. App. P. 24(a)(4), the Clerk is directed to  
9 immediately notify Plaintiff and the Court of Appeals for the Ninth Circuit of  
10 this Order.

11 Plaintiff is advised that he may still seek leave to proceed *in forma*  
12 *pauperis* on appeal by filing such a motion in the Court of Appeals for the  
13 Ninth Circuit within thirty (30) days of service of this Order. *See* Fed. R. App.  
14 P. 24(a)(5).

15  
16 DATED: March 23, 2023

  
DOLLY M. GEE  
UNITED STATES DISTRICT JUDGE